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09/934,033	08/21/2001	Alexander Rothacker	28655/37222	7797

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EXAMINER

NGUYEN, TAM M

ART UNIT PAPER NUMBER

3764

DATE MAILED: 08/14/2003

*3*

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/934,033

Applicant(s)

ROTHACKER, ALEXANDER

Examiner

Tam Nguyen

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Specification*

1. The use of the trademark "Olympic" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speyer (3,825,253) in view of Rankin (5,011,138), Wendt (4,444,396), and in further view of the Choice1 Medical Distributors website.

2. As to claim 1, Speyer discloses an incremental weight system comprising a plurality of weights that are thin disks having a center opening adapted to receive a standard barbell and a slot adapted to received a weight bearing cable (see Figs. 2 & 3). Speyer does not disclose that the weights range in weight from about one-quarter ounce to about thirty-two ounces. Rankin discloses an exercise device that utilizes 1/8 of an ounce weight plates (see Col. 7, lines 30-33), Wendt discloses an exercise device that utilizes weight plates of various sizes weighing 1, 2, 4, 8 and 16 ounces (see ABSTRACT), and Choice1 discloses a 36 ounce weight plate for exercise

Art Unit: 3764

(see website c1md.com). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make Speyer's weight plates into any of an array of sizes from 1/8 ounce up to 45 pounds since the use of such a range of sizes of weight plates is known in the exercise art and the practice of incrementally adding weight plates during exercise is well known.

3. As to claims 2 and 3, Speyer, Rankin, Wendt, and Choice1 disclose a modified weight system as described above (see discussion of claim 1). Rankin and Wendt disclose weight plates having 1/8 of an ounce up through 16 ounces. They do not disclose a 1/2 or 1/4 ounce weight plate. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make the modified weight plates into any of an array of sizes from 1/8 ounce up to 45 pounds, thereby including 1/2 and 1/4 ounce weight plates, since the use of such a range of sizes of weight plates is known in the exercise art and the practice of incrementally adding weight plates during exercise is well known. Furthermore, where the range of article sizes disclosed in the prior art envelopes the recited range, and there is no showing of criticality of the recited range, such recited range would have been obvious to one of ordinary skill in the art. In re Reven, 390 F.2d 997, 156 USPQ 679 (CCPA 1968).

4. As to claims 4 and 7, Speyer discloses an incremental weight system comprising a standard barbell (16), standard weights (10c), and a plurality of weights (10a, 10b) that are thin disks having a center opening adapted to receive a standard barbell and a slot adapted to received a weight bearing cable (see Figs. 2 & 3). Speyer does not disclose that the weights range in weight from about one-quarter ounce to about thirty-two ounces. Rankin discloses an exercise device that utilizes 1/8 of an ounce weight plates (see Col. 7, lines 30-33), Wendt discloses an

Art Unit: 3764

exercise device that utilizes weight plates of various sizes weighing 1, 2, 4, 8 and 16 ounces (see ABSTRACT), and Choice1 discloses a 36 ounce weight plate for exercise (see website c1md.com). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make the incremental weights plates into any of an array of sizes from 1/8 ounce up to 45 pounds since the use of such a range of sizes of weight plates is known in the exercise art and the practice of incrementally adding weight plates during exercise is well known.

5. As to claims 5 and 6, Speyer, Rankin, Wendt, and Choice1 disclose a modified weight system as described above (see discussion of claim 4). Rankin and Wendt disclose weight plates having 1/8 of an ounce up through 16 ounces. They do not disclose a 1/2 or 1/4 ounce weight plate. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make the modified weight plates into any of an array of sizes from 1/8 ounce up to 45 pounds, thereby including 1/2 and 1/4 ounce weight plates, since the use of such a range of sizes of weight plates is known in the exercise art and the practice of incrementally adding weight plates during exercise is well known. Furthermore, where the range of article sizes disclosed in the prior art envelopes the recited range, and there is no showing of criticality of the recited range, such recited range would have been obvious to one of ordinary skill in the art. In re Reven, 390 F.2d 997, 156 USPQ 679 (CCPA 1968).

Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webber et al. (6,193,635) in view of Rankin (5,011,138), Wendt (4,444,396), and in further view of the Choice1 Medical Distributors website.

Art Unit: 3764

6. As to claims 8-11, Webber discloses an incremental weight system comprising a cable type weight training apparatus and a plurality of weights having a slot adapted to receive a weight bearing cable and a center opening adapted to receive a standard barbell (see Col. 6, lines 34-44, Col. 7, lines 24-26 & Fig. 11). Webber does not disclose that the weights range in weight from about one-quarter ounce to about thirty-two ounces including at least a  $\frac{1}{4}$  ounce weight, a  $\frac{1}{2}$  ounce weight, a 1 ounce weight, a 2 ounce weight, a 4 ounce weight, an 8 ounce weight, a 16 ounce weight, and a 32 ounce weight. Rankin discloses an exercise device that utilizes  $\frac{1}{8}$  of an ounce weight plates (see Col. 7, lines 30-33), Wendt discloses an exercise device that utilizes weight plates of various sizes weighing 1, 2, 4, 8 and 16 ounces (see ABSTRACT), and Choice1 discloses a 36 ounce weight plate for exercise (see website c1md.com). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make Webber's add-on weight plates into any of an array of sizes from  $\frac{1}{8}$  ounce up to 32 ounces since the use of such a range of sizes of weight plates is known in the exercise art and the practice of incrementally adding weight plates during exercise is well known.

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speyer (3,825,253), in view of Rankin (5,011,138), Wendt (4,444,396), and in further view of Webber et al. (6,193,635)

7. As to claims 12-14, Speyer discloses an incremental weight system comprising a plurality of weights having a slot adapted to receive a weight bearing cable and a center opening adapted to receive a standard barbell (see Fig. 3). Webber does not disclose that the weights are  $\frac{1}{4}$  ounce,  $\frac{1}{2}$  ounce, and 1 ounce in size. Rankin discloses an exercise device that utilizes  $\frac{1}{8}$  of an ounce weight plates (see Col. 7, lines 30-33) and Wendt discloses an exercise device that utilizes

Art Unit: 3764

weight plates of various sizes weighing 1, 2, 4, 8 and 16 ounces (see ABSTRACT). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make Speyers weight plates into any of an array of sizes from 1/8 ounce up to 32 ounces since the use of such a range of sizes of weight plates is known in the exercise art and the practice of incrementally adding weight plates during exercise is well known.

Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speyer (3,825,253), in view of Rankin (5,011,138), Wendt (4,444,396), Choice1Medical distributors website, and in further view of Webber et al. (6,193,635)

8. As to claims 15-20, Speyer discloses an incremental weight system and inherently a method for exercising as substantially claimed wherein the system comprises a plurality of weights having a slot adapted to receive a weight bearing cable and a center opening adapted to receive a standard barbell (see Fig. 3). Webber does not disclose that the weights are 1/4, 1/2, 1, 2, 4, 8, 16, and 32 ounces in size. Rankin discloses an exercise device that utilizes 1/8 of an ounce weight plates (see Col. 7, lines 30-33) and Wendt discloses an exercise device that utilizes weight plates of various sizes weighing 1, 2, 4, 8 and 16 ounces (see ABSTRACT). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make Speyers weight plates into any of an array of sizes from 1/8 ounce up to 32 ounces since the use of such a range of sizes of weight plates is known in the exercise art and the practice of incrementally adding weight plates during exercise is well known as a method to build strength in the user.

Art Unit: 3764

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Clayton '613 discloses a method of exercising that includes the use of 1 ounce weights plates.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 703-305-0784. The examiner can normally be reached on M-F 9-5.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



NICHOLAS D. LUCCHESI  
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August 6, 2003